

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 87-223-E - ORDER NO. 91-478 ✓
MAY 30, 1991

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| IN RE: | Generic Proceeding to Address |) | ORDER RULING |
| | Least Cost Planning Procedures |) | ON MOTION TO |
| | for Jurisdictional Electric |) | COMPEL RESPONSES |
| | Utilities. |) | TO INTERROGATORIES |

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Motion to Compel Carolina Power & Light Company (CP&L) to respond to certain Interrogatories and a Petition for Rule to Show Cause filed on behalf of Steven W. Hamm, Consumer Advocate for the State of South Carolina (the Consumer Advocate). The Motion and Petition ask the Commission to require CP&L to provide responses to certain interrogatories propounded by the Consumer Advocate in the instant docket and to order CP&L to show cause why it should not be censured and cited for mismanagement. CP&L filed a response to the Consumer Advocate's Motion to Compel and Petition for Rule to Show Cause. Additionally, other pleadings reviewed by the Commission in this matter are CP&L's responses and objections to the Consumer Advocate's sixth, seventh and eighth sets of Interrogatories, Duke Power Company's response and objections to the sixth, seventh and eighth sets of the Consumer Advocate Interrogatories, the Return filed by the Consumer Advocate to Duke

Power Company's objections, its reply to CP&L's Response to the Motion to Compel and an Additional Motion to Compel CP&L to respond to the Consumer Advocate's Interrogatories set Nos. seven and eight. The scope of discovery is as set forth in Rule 26 of the South Carolina Rules of Civil Procedure. Rule 26(b) states that:

Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

- (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The Consumer Advocate contends that in order to develop proper least cost planning procedures, the Commission has requested the companies, including CP&L, to file resource plans containing load and sales forecasts, as well as additional information, and the Consumer Advocate has sought supplemental information consistent with the Commission's Order No. 87-569. The Consumer Advocate had previously sought and obtained certain non-utility power producer information, and wheeling and transmission information as late as January, 1991. The Consumer Advocate sent to CP&L a sixth set of interrogatories, as well as a courtesy clarification letter on

March 27 and March 28, 1991, respectively, and by response dated April 17, 1991, the Company objected to each of the eleven interrogatories as being "irrelevant." The Consumer Advocate points out that at the same time CP&L was responding to these questions relating to wheeling, non-utility power producers, QF's, franchise agreements, competition, expansion of service territory, and amendment to the Public Utility Holding Company Act as being irrelevant to this proceeding, it had provided other information to the Securities and Exchange Commission (SEC) and the media on these very subjects within a resource planning context. The Consumer Advocate contends that the Commission should not only compel the Company to respond to the Consumer Advocate's interrogatories, it should also censure CP&L and cite it for mismanagement for its "frivolous responses made in bad faith" to these relevant requests.

CP&L's response contends that the information filed at the SEC is required to be filed and that the information requested by the Consumer Advocate is not in concert with this "generic" docket, which is to establish planning procedures for the Commission's electric utilities to allow for integrated resource planning. CP&L contends that the effort on behalf of the Consumer Advocate to obtain the Company's specific information is not relevant to the subject matter of this proceeding.

The Commission disagrees with CP&L's objection to the Consumer Advocate's discovery request. While this is a generic proceeding, Company specific information is relevant to this proceeding,

particularly in the discovery stage. So that a proper least cost or integrated resource planning procedure can be established, it is necessary for certain company specific information to be known so that a procedure can be planned that will equally apply to all jurisdictional electric utilities. Therefore, the Company's contention as to the questions as being irrelevant, is misplaced.

The Commission will address, on an individual basis, the specific interrogatories to which CP&L should respond. As to the request of the Consumer Advocate that CP&L be censured and cited for mismanagement for its failure to respond to the discovery request, the Commission has reviewed the response of CP&L and finds that the evaluation by its legal counsel is proper in this matter. The Company has a right to evaluate the request and object to those matters which it deems to be irrelevant. Of course, the Commission expects that all parties would deal with each other in good faith, and that no party would intentionally delay the proceedings in this matter through discovery. However, since no hearing has been scheduled, there has been no delay of any process and the Commission is of the opinion that the Company's objections were made in good faith, no censure from the Commission is necessary. Now that the Commission has made its position clear as to the scope of discovery in this matter, it is anticipated that further unreasonable discovery problems will not arise in this matter. The Commission will address on an individual basis the particular interrogatories objected to by CP&L which are requested to be answered.

INTERROGATORY SET NO. 6

Interrogatory 6-1. The Consumer Advocate has asked the Company its position on retail wheeling. The Company objects to this request. The Commission has determined that the Company should respond to this interrogatory. Retail wheeling is an issue in integrated resource planning and, therefore, the Company should give its position on the matter.

Interrogatory 6-2. This interrogatory requests the Company's view as to whether or not the Public Service Commission has the authority to order or allow retail wheeling. The Company objected to this interrogatory on the grounds that it calls for a legal opinion. The Consumer Advocate withdrew its request for a response to its interrogatory, provided that the Commission addresses the issue in the instant motion. However, the Commission has determined that this is not the appropriate forum for it to address the Commission's authority to order or allow retail wheeling. That is a matter that may be more appropriately addressed in the context of the PURPA docket or in some other appropriate proceeding.

Interrogatory 6-3. Interrogatory 6-3 requests copies of 1990 and 1991 correspondence with prospective retail wheeling customers and other information. The Commission is of the opinion that this information should be provided as it is relevant discovery.

Interrogatory 6-4. CP&L objected to supplying copies of all franchise agreements, charters and other retail territory service agreements for all retail jurisdictions. Again, the Commission is of the opinion that this matter is relevant discovery and should be

responded to.

Interrogatory 6-6. CP&L objected to supplying copies of all 1990 and 1991 correspondence with potential qualified facilities and non-utility power producers. CP&L's objection was on the grounds of relevancy. The Commission finds that such documentation is relevant and should be provided if available.

Interrogatory 6-9. CP&L objects to answering whether CP&L favors amendments to the Public Utilities Holding Company Act on the basis that it seeks information which is not relevant to the subject matter of this proceeding and is unduly vague and ambiguous. While the Commission is of the opinion that the information as requested is relevant, the Consumer Advocate should provide the Company with the specific amendments it is referring to in the interrogatory. Upon the provision of such amendments, CP&L should respond.

Interrogatory 6-10. CP&L objects to answering this question concerning the amendments to the Public Utilities Holding Company Act on the ground that it is not relevant and is unduly vague and ambiguous. Again, the Commission is of the opinion and so finds that the Company should answer this interrogatory upon being supplied the appropriate amendments.

Interrogatory 6-11. CP&L objects to answering the Consumer Advocate's interrogatory as to whether or not the Company is considering expansion to its service territory. CP&L states that a company's service territory or expansion thereof does not impact the least cost planning procedures. However, the Commission could

see where expansion could impact the cost of service of a utility and the potential impact on the Company's rates. Therefore, this question could lead to admissible evidence and should be responded to by CP&L.

Interrogatory 7-1. CP&L objects to producing copies of all written documentation, pursuant to which CP&L provides service to any city, municipality or other entity, as well as all permits to serve when there are no written franchise agreements between CP&L and the city or municipality in question and for other specific information. Again, CP&L's objection is to the relevancy of these questions. The Commission is of the opinion that such an inquiry is relevant to this proceeding and should be responded to by CP&L.

Interrogatory 7-3. This interrogatory asks CP&L to review an article which appears in The State Newspaper and "indicate whether or not the Company agrees with the representation therein." CP&L objects to this interrogatory on the basis of the information sought is not relevant to the subject matter of the pending action and is unduly vague and ambiguous. The Commission disagrees that the matter is irrelevant, but the Commission is of the opinion that the question should be more specific. Upon being provided the specifics, the Company should respond to the Consumer Advocate's questions concerning the newspaper article.

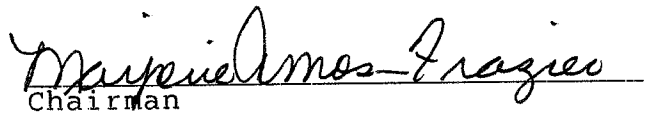
Interrogatory 7-4. CP&L objects to supplying copies of all notices and inquiries received in 1990 and 1991 from cities, municipalities, cooperatives and other customers that either have or are considering alternatives to purchasing bulk power from the

Company. This information has been determined by the Commission to be relevant to the proceeding. CP&L should respond.

The Commission notes that as to Duke Power Company, it has responded satisfactorily to the interrogatories of the Consumer Advocate. Additionally, CP&L has responded to the Consumer Advocate's eighth set of interrogatories, as well as Question No. 7-2. Based on the Commission's rulings herein, all interrogatory responses are expected to be supplied and any further clarification should be supplied to CP&L by the Consumer Advocate as soon as possible.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)